



# LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN KYRGYZSTAN

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ECOM



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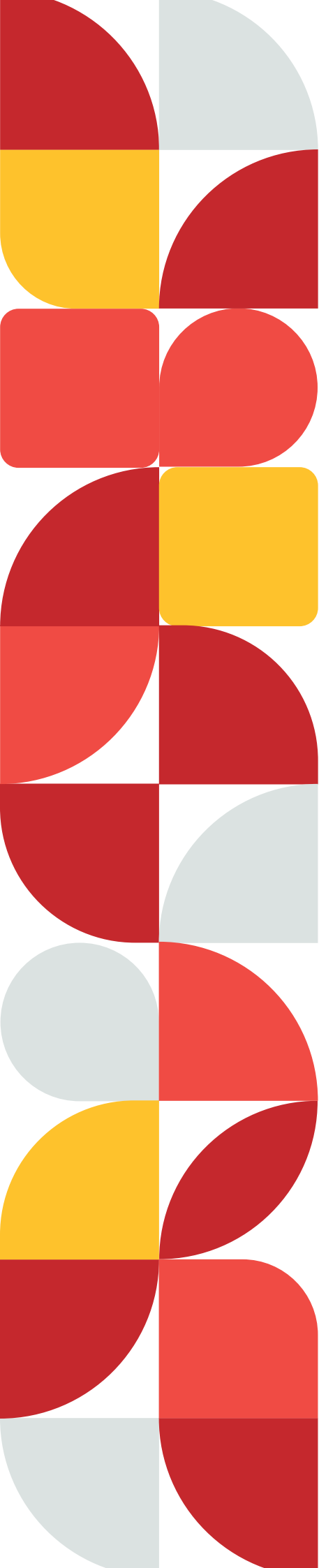


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The goal of this comparative analysis is to identify legal barriers, as well as problems in areas where necessary legislation already exists, but does not fully ensure the realization of the rights and freedoms of gay men, other MSM, and trans\* people. For this analysis, ECOM developed a methodology and questionnaire that was completed by local partners in Kyrgyzstan. When analyzing legal practices, judicial practice and government statistics were taken into account, as well as reports of activists, information and statistics from organizations involved in documenting and protecting from human rights violations, press reports, and the reports of non-governmental organizations to international legal bodies.

Legislation and law enforcement practice were considered from two dimensions. The first is their compliance with international standards on human rights and freedoms. The second is the actual ability to obtain protection and realize the rights and freedoms provided for by international obligations and national law.

To provide information on current legislation as part of this analysis, excerpts from normative and legal acts are provided, which, unfortunately, are not always correct and do not always comply with international terminology standards. In this case, the original formulations are used in order to provide an objective reflection of the existing legal framework and language adopted in relation to the issues being considered. All quotes from normative and legal acts appear in italics and have corresponding citations to original document.

The information presented in this document can be useful for both non-governmental organizations and LGBT community activists, as well as for government representatives in planning advocacy processes, promoting the rights of gay men, other MSM, and trans\* people, and in overcoming and eliminating barriers that prevent them from accessing services and protecting their rights and freedoms.

## ABBREVIATIONS AND ACRONYMS

**EECA** Eastern Europe and Central Asia

**HC** Hate crimes

**HIV** Human immunodeficiency virus

**LGBT** Lesbian, gay, bisexual and trans\* people

**MSM** Men who have sex with men

**NGO** Non-governmental organization

**PLHIV** People living with HIV

**SOGI** Sexual orientation and gender identity

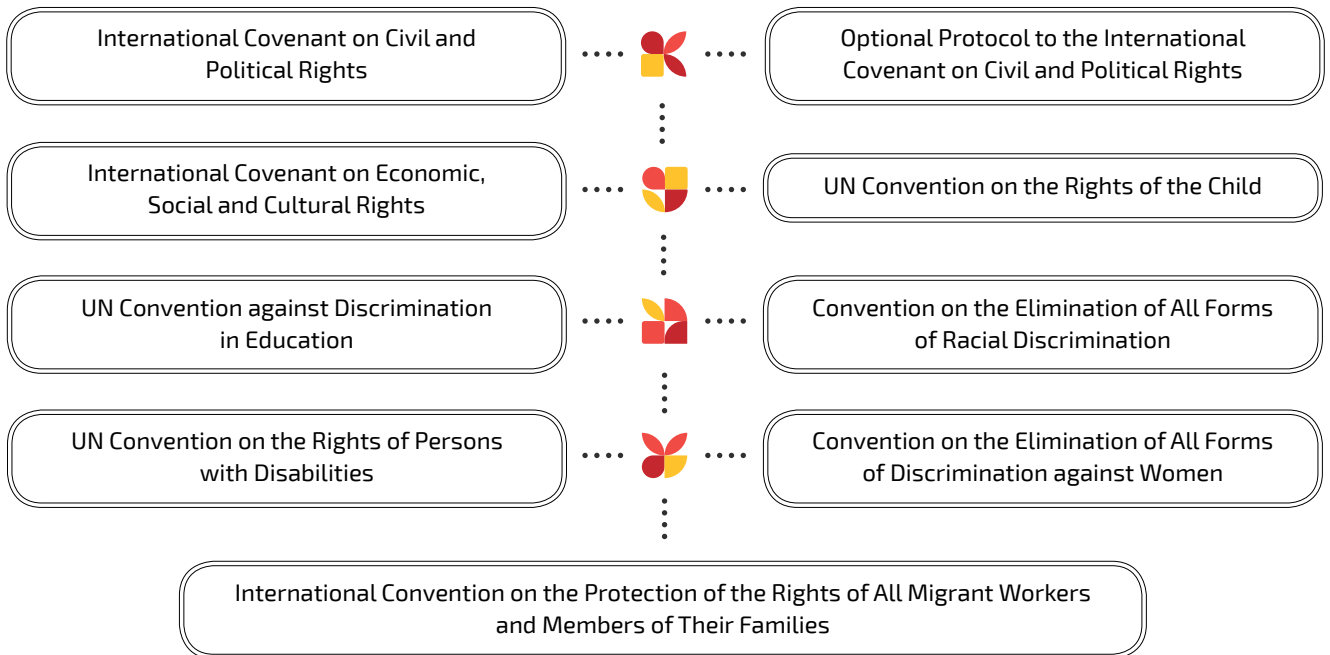
**TB** Tuberculosis

**WHO** World Health Organization

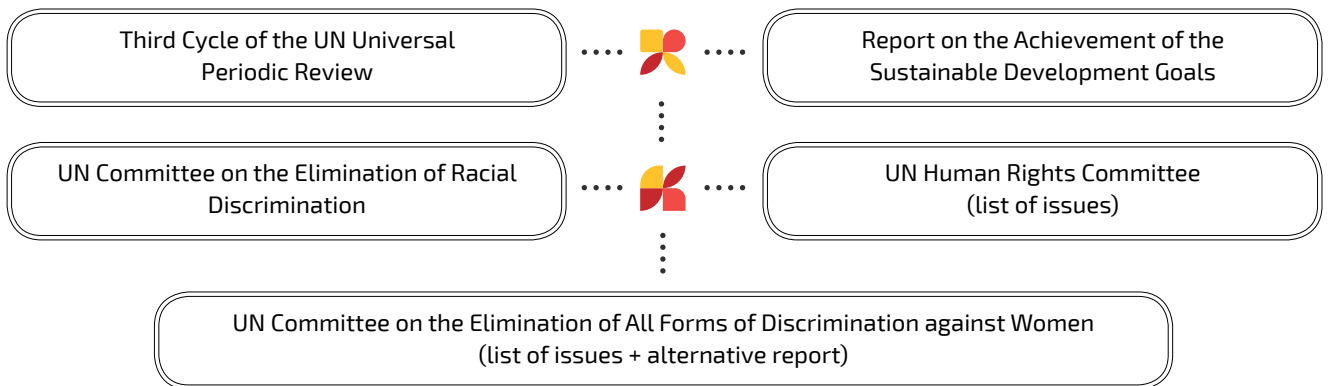
**Trans\*** Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including, but not limited to, transgender, genderqueer, gender-mutable, agender, third gender, bigender



## INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY



## CIVIL SOCIETY IN THE REPUBLIC OF KYRGYZSTAN USES MECHANISMS FOR ALTERNATIVE REPORTING TO UN BODIES






LGBT human rights organizations cooperate with the UN Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health on issues related to the right to health. Kyrgyzstan is also a member of the OSCE, and civil society has the opportunity to cooperate with the Office for Democratic Institutions and Human Rights (ODIHR) in monitoring hate crimes<sup>1</sup>. The government does not provide official data, however, NGOs provided data for 2018 and identified 29 incidents of hate crimes based on SOGI and 8 incidents based on other grounds.

<sup>1</sup> Full data for 2018 is available in the ODIHR database at: <https://hatecrime.osce.org/kyrgyzstan?year=2018>



**AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS HAVE BEEN INCORPORATED IN THE FOLLOWING LAWS<sup>2</sup>**

LEGISLATION	YES	NO
 <b>PROTECTION FROM DISCRIMINATION</b>		
Provision on the prohibition of discrimination in the Constitution,	✓	
separate law defining and prohibiting discrimination, including on the basis of SOGI		✗
Law on the prohibition of domestic violence,	✓	
including on the basis of SOGI		✗
Provision on hate crimes in the Criminal Code of the Republic of Kyrgyzstan		✗
 <b>RIGHT TO HEALTH</b>		
Separate law on the rights of people living with HIV	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health in relation to PLHIV	✓	
Provision on the prohibition of discrimination in the field of education on the basis of HIV+ status	✓	
Prohibitions on immigration or entry into the country for PLHIV		✗
Criminal liability for intentional and/or unintentional transmission of HIV	✓	
Prohibition on blood donation by MSM		✗
special screening procedures for MSM donors		✗
 <b>RIGHT TO HEALTH FOR TRANS* PEOPLE</b>		
Legal gender recognition procedure	✓	
Obligatory psychological and psychiatric examination	✓	
Requirement of mandatory surgical procedures for trans* transition (formally there is no such requirement)		✗
Adopted medical protocol for trans* people in accordance with ICD-10	✓	
Permission to use international medical protocols for doctors caring for trans* people	✓	
Normatively established list of contraindications to gender reassignment (yes, must be at least the age of majority)	✓	

<sup>2</sup> How these laws protect PLH and LGBT people in practice is detailed in the next section.

LEGISLATION	YES	NO
 <b>RIGHT TO PRIVATE AND FAMILY LIFE</b>		
Recognition of same-sex partnerships at the legislative level		✗
Recognition through the courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary same-sex relations		✗
Possibility for trans* people to enter into heterosexual marriages after legal gender change	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people	✓	
Adoption by trans* people after legal gender change	✓	
Adoption by PLHIV		✗
Age of consent for voluntary heterosexual and homosexual relations (the same)	✓	
 <b>RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY</b>		
Legislation regulating the procedure for holding peaceful assemblies	✓	
Mandatory permission from local authorities to hold a peaceful assembly		✗
Prohibition on peaceful assemblies for LGBT people (formally no)		✗
Penalties for holding a peaceful assembly that has not been coordinated with the authorities	✓	
Law «on the prohibition of gay propaganda»		✗
Attempts to introduce bills restricting the freedom of speech of LGBT people, including bills «prohibiting gay propaganda»	✓	
 <b>FREEDOM OF ASSOCIATION AND FUNDING OF NGOS</b>		
Possibility for NGOs to receive funding from national and/or local budgets	✓	
Real working mechanisms for the distribution of state funds to NGOs working in the social sector, excluding healthcare, for example in the field of education, culture, sports, youth, social protection	✓	
Real working mechanisms for the distribution of state funds to NGOs working in the health sector	✓	
State funding for HIV services for LGBT people		✗
Obligatory authorization procedure for the registration of a public organization	✓	
Registration of an LGBT public organization	✓	
Possibility to receive donor support from international organizations and foundations (but attempts are being made through legislation to tighten control over the work of NGOs)	✓	



## INTRODUCTION


### ARTICLE 31

- 1 *Everyone shall have the right to freedom of thought and opinion.*
- 2 *Everyone shall have the right to free expression of opinion, freedom of speech, and press.*
- 3 *No one may be forced to express his/her opinion or to deny it.*
- 4 *The promotion of national, ethnic, racial, religious hatred, and gender or other forms of social supremacy, which incites discrimination, hostility, or violence, shall be prohibited<sup>3</sup>.*

The Republic of Kyrgyzstan is an independent, law-based, and democratic state, which must obey secular laws and adhere to human right standards in accordance with its international obligations. Although the regime in power in Kyrgyzstan cannot be unambiguously called an authoritarian dictatorship, with regard to the observance of human rights, in particular the rights of LGBT people, there remain big issues that raise concerns for human rights defenders.

Despite this, Freedom House, in its annual 2020<sup>4</sup> *Freedom in the World* ratings names the Republic of Kyrgyzstan the leader of freedom in the region (this is clearly in comparison with its neighboring post-Soviet states, which are largely characterized by closed and authoritarian regimes). Some positives that should be noted include the mixed presidential-parliamentary form of government, the quite noticeable development of new parties and party leaders, the establishment of contacts and cooperation between some political powers and the public sector, and the inclusion of human rights, gender equality, and nondiscrimination of marginalized groups in the agenda.







In terms of compliance with international standards and obligations, the Republic of Kyrgyzstan has ratified all necessary UN human rights documents:

-  International Covenant on Civil and Political Rights;
-  Optional Protocol to the International Covenant on Civil and Political Rights;
-  International Covenant on Economic, Social and Cultural Rights;

<sup>3</sup> Constitution of the Republic of Kyrgyzstan, full text available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202913>

<sup>4</sup> Full text of the report on the Republic of Kyrgyzstan for 2020 available in English at: <https://freedomhouse.org/country/kyrgyzstan/freedom-world/2020>



-  UN Convention on the Rights of the Child;
-  UN Convention against Discrimination in Education;
-  Convention on the Elimination of All Forms of Racial Discrimination;
-  Convention on the Elimination of All Forms of Discrimination against Women;
-  International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
-  UN Convention on the Rights of Persons with Disabilities.

State bodies regularly submit reports to the UN Treaty Bodies and are part of Universal Periodic Review (UPR). In the third UPR cycle, the state mentions the development of an antidiscrimination law as part of its achievements in the fight against discrimination. However, later after receiving recommendations from member states, 18 of which related to antidiscrimination actions, policies, and legislation, and 16 of which included SOGI among the recommended protected characteristics, the authorities did not accept these recommendations as binding, but rather indicated that they were «noted». This step is difficult to explain, since the draft antidiscrimination law that was developed and reported by the state as an achievement already contains SOGI among the protected characteristics.

In recent years, the Republic of Kyrgyzstan has received similar recommendations from the UN Committee on the Elimination of Discrimination Against Women and the UN Committee on the Elimination of Racial Discrimination regarding the observance of the rights of LGBT people, gender equality, and the rights of PLHIV. In order to implement these and other recommendations, a national inter-agency action plan was adopted at the government level, in which the fourth paragraph relates to carrying out an analysis of the need for anti-discrimination legislation, while the sixth paragraph details the need to adopt measures to combat multiple discrimination against LGBT people. However, according to local civil society activists, the objectives and areas of activity in this action plan are described in such general terms that it is rather difficult to monitor their effective and timely implementation.

The country is not a member of the Council of Europe and has not ratified the Istanbul Convention<sup>5</sup>. However, at the national level, issues of gender equality and combating domestic violence are actively discussed at least by civil society. Here it is important to note the development of partnerships between general human rights organizations, human rights organizations working in the field of women's rights, and LGBT human rights organizations. The authors of the study note that, of all the countries in the region, the Republic of Kyrgyzstan has the most developed human rights movement and the highest level of partnerships and solidarity between various human right groups.

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<sup>5</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, full text available in Russian at: <https://rm.coe.int/168046253f>

In the press freedom rating developed by the organization «Reporters without Borders», the Republic of Kyrgyzstan is also the leader in the region: in 2020, it was rated «**Better, but could do even better**» and is in 82<sup>nd</sup> place<sup>6</sup>. The authors of the rating note that «**There is still a great deal of self-censorship on such subjects as inter-ethnic relations. Certain kinds of hate speech still go unpunished, but the fight against “extremism” is sometimes used as grounds for ill-advised prosecutions of social media users**». According to ECOM partners in the country, statements containing hate speech against LGBT people are still widespread and are not adequately addressed, as they often come from politicians and officials:

*«In the political practice of independent Kyrgyzstan, the justification of and calls for violence against LGBT people have practically become the norm. Similar calls have been made by politicians, including deputies of the Jogorku Kenesh (Parliament) in connection with the peaceful march of March 8, 2019-2020, and other civil protests against corruption. Political forces create a negative image of LGBT citizens in order to distract the public from pressing issues related to healthcare, education, the impoverishment of the population, and the inability of the authorities to adequately respond to the current challenges of the pandemic and economic crisis. The same trend of using LGBT people as an enemy is actively used during elections to the Jogorku Kenesh in order to “discredit” certain political parties on social networks and in the media»<sup>7</sup>.*

In addition, as a member of the OSCE, the state could report on the number of registered hate crimes and the progress of their investigation, but prefers not to. In turn, public organizations, in particular the Coalition «For Equality», collect such data and submit the number of recorded incidents for registration in the OSCE database<sup>8</sup>. It is important to note that the lack of statistics raises concerns not only in relation to the registration of hate crime allegations, but also with respect to other data collected by government agencies, which is not disaggregated by SOGI, among other things. This primarily concerns data on cases of domestic violence, discrimination, and hate speech, and the investigation of such incidents.

According to local NGOs, outside the capital, there are frequent incidents demonstrating the patriarchal nature of society and the high level of religiosity; the majority of the residents of the country consider themselves Muslim<sup>9</sup>. Due to this, it is nearly impossible for people, especially young people, to freely choose and declare their own lifestyle, which may differ from the conventional «normal» lifestyle approved by the majority, which, of course, primarily negatively affects LGBT adolescents in remote areas, where there are no community centers, community organizations, or other support services.

Combined with other factors, such as the rather high level of corruption and violence on the part of law enforcement agencies, there remains a significant threat of the forced disclosure of the status of LGBT people and room for intimidation, extortion, and violence by both government officials as well as family members.

• <sup>6</sup> 2020 Rating available in English at: <https://rsf.org/en/kyrgyzstan>

• <sup>7</sup> Full text of the statement of the NGO «Kyrgyz Indigo» available in Russian: <https://indigo.kg/7090.html>

• <sup>8</sup> Complete data from 2018 available in the database at: <https://hatecrime.osce.org/kyrgyzstan?year=2018>

• <sup>9</sup> Freedom of Religion in the Kyrgyz Republic: An Overview of Legal Guarantees and Practices. Authors: Dmitry Kabak, Almaz Esengeldiev. Public Foundation «Open Position», 2011. 76 pages. <https://www.osce.org/files/f/documents/f/2/93787.pdf>

As in other EECA countries, researchers find it difficult to unequivocally answer the question of what the primary and most significant problem is for LGBT people living in these countries — the lack of certain guarantees at the legislative level (including those corresponding to international human rights standards) or the ineffectiveness of existing protection instruments. In the case of the Kyrgyz Republic, the complexity of the situation is due to the fact that, although from the outside, the country appears rather progressive in comparison to its neighbors, local authorities still tend to make more declarative statements than real efforts to protect the rights of LGBT people. And progress made today may be abruptly replaced by regression tomorrow, depending on the right in question (more details can be found, for example, in the section on the right to freedom of speech and freedom of peaceful assembly).

It is precisely this difficulty that informed the design of the methodology used by ECOM for several years in a row to assess the status and progress, and sometimes regression, of the right to health and other human rights of gay men, other MSM and trans\* people in the countries of EECA. In the next section, we will examine in more detail how individual human rights standards for LGBT people are reflected in national legislation and implemented in practice.



## PROBLEMATIC ASPECTS OF THE LEGISLATION AND LAW ENFORCEMENT PRACTICES OF KYRGYZSTAN

The Constitution of the Kyrgyz Republic was adopted on 27 June 2010 by referendum. It declares the principle of non-discrimination (**«No one shall be subject to discrimination on the basis of sex, race, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, as well as other circumstances»<sup>10</sup>**) and the prohibition of the promotion of national, ethnic, racial, and religious hatred, and gender and other social supremacy, which incites discrimination, hatred, or violence<sup>11</sup>.

It should be noted that several laws of the Kyrgyz Republic enshrine the concept of discrimination and prohibit discriminatory attitudes on some grounds. For instance, there is a prohibition on gender discrimination in family relations<sup>12</sup> and on discrimination in the field of labor relations<sup>13</sup>.

A number of normative acts do not use the term «discrimination», but mention the principle of equality, for example, in access to medical and social assistance<sup>14</sup> and in the right to education<sup>15</sup>.

Despite the above, there is no separate legislative act on the prohibition of discrimination in the Kyrgyz Republic, nor any mention of the prohibition of discrimination on the basis of SOGI in any regulatory documents. However, in some areas, these characteristics may be taken into account due to the open-endedness of the list of characteristics (**«as well as other circumstances»**), contained in Article 16 of the Constitution of the Kyrgyz Republic<sup>16</sup> and in other laws, for example, Article 61 of the Law of the Kyrgyz Republic «On the protection of health in the Kyrgyz Republic», and Article 4 of the Law of the Kyrgyz Republic «On Peaceful Assemblies».

For a more complete consideration of issues of discrimination, issues related to the attitudes towards PLHIV should be examined. On the one hand, the provisions of the Law of the Kyrgyz Republic «On HIV/AIDS in the Kyrgyz Republic» enshrines both the very definition of «discrimination», and the inadmissibility of discrimination and stigma against PLHIV and LGBT people, and of the infringement of their legitimate interests, rights, and freedoms on the basis of their HIV status. On the other hand, according the List of diseases, the presence of which precludes a person from becoming an adoptive parent, guardian, or foster parent, PLHIV do not have the possibility of adoption<sup>17</sup>.

<sup>10</sup> Constitution of the Kyrgyz Republic, Article 16.

<sup>11</sup> Id., Article 31.

<sup>12</sup> Family Code of the Kyrgyz Republic, Articles 3 and 32.

<sup>13</sup> Labor Code of the Kyrgyz Republic, Articles 2 and 9.

<sup>14</sup> Law of the Kyrgyz Republic «On the protection of health in the Kyrgyz Republic», Article 61.

<sup>15</sup> Law of the Kyrgyz Republic «On education», Article 3.

<sup>16</sup> Constitution of the Kyrgyz Republic, Article 16.

<sup>17</sup> List of diseases the presence of which precludes a person from becoming an adoptive parent, guardian, and foster parent, approved by Decree of the Government of the Kyrgyz Republic of 27 October 2015 733.

The Kyrgyz Republic criminalized the transmission of HIV by introducing Article 149 of the Criminal Code «**Infection with an incurable infectious disease**», which imposes liability on persons who put another person «**at risk of infection with the human immunodeficiency virus**» or who infect another person, including due to negligence. At the same time, in all cases, except for intentional infection, the person held responsible is cleared of liability «**if another person put at risk of HIV infection was promptly warned about the presence of this disease in the first person and voluntarily agreed to commit the actions that created the danger of infection**»<sup>18</sup>.

The criminal legislation of the Kyrgyz Republic does not contain a separate definition of hate crimes (HC), however, the list of aggravating circumstances<sup>19</sup> contains the clause «**commission of a crime based on racial, ethnic, national, religious, or inter-regional hatred (hostility)**». In addition, these are not the only protected characteristics that are mentioned in the text of the articles.

The Criminal Code also contains a rather progressive article, which provides liability for «**the violation of human equality, namely the direct or indirect restriction of rights or the establishment of direct or indirect privileges based on gender, race, nationality, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, which, through negligence, has caused significant harm**»<sup>20</sup>.

In analyzing the actual situation in the country, we can say that hate crimes exist and are being committed, including against LGBT people, but the real motives for such crimes are not made explicit in sentencing due to the lack of any mention of characteristics such as SOGI, and to the fear of victims of speaking openly about themselves and their status.

Voluntary same-sex relations were decriminalized in the Kyrgyz Republic back in 1998, but according to a report of the International Mission<sup>21</sup> «**members of the LGBT community often face discrimination and violence, including by state and non-state actors**». The director of the organization «The GRACE», Lilia Ten, stated in an interview: «**Law enforcement officers meet LGBT people directly through dating websites then invite them for a date. Then, when the person arrives to the date, they are shown the correspondence from the dating site and are told: 'We will show this to your relatives, friends, and colleagues at work. Or you get us some money'. This is a classic extortion scheme**»<sup>22</sup>.

Serious concerns are also raised by the latest trends related to the lawmaking practices of parliamentarians of the Kyrgyz Republic, who, in June 2015, adopted draft bill N6-11804/14 in its second reading. The norms of this bill, among other things, provide for the introduction of Article 133-1 «**Formation of a positive attitude towards non-traditional sexual relations with the assistance of mass media**»<sup>23</sup>. Later, under pressure from international human rights organizations, the bill was withdrawn, but even now, there are serious concerns about a possible change in the situation for the worse.

<sup>18</sup> Criminal Code of the Kyrgyz Republic, Article 149.

<sup>19</sup> Id., Article 75.

<sup>20</sup> Id., Article 185.

<sup>21</sup> Full text available in Russian at: <https://www.fidh.org/IMG/pdf/kyrgyzstanobsrusse2016web-2.pdf>

<sup>22</sup> <https://elgezit.kg/2020/07/24/gomofobiya-shantazh-vymogatelstvo-chast-povsednevnoj-zhizni-lgbt-lyudej-v-kyrgyzstane-intervyu-s-liliej-ten/>

<sup>23</sup> There is no link to the text of the draft bill in the database of legal acts of the Kyrgyz Republic, but the results of its legal examination are available in Russian at: <https://ihahr-nis.org/sites/default/files/files/ez-lgbt-kyrgyzstan.pdf>



## PRIVATE AND FAMILY LIFE

The Kyrgyz Republic not only does not recognize same-sex marriage and/or partnerships, but, on the contrary, has made the conditions for marriage stricter. Following amendments to the Constitution in 2016, the relatively liberal norm **«Persons who have reached marriageable age have the right to marry and create a family»** was replaced by the wording **«A family is established on the basis of a voluntary union of a man and a woman who have reached the legal age of marriage and who have entered into marriage with each other»<sup>24</sup>**.

The legislation of the Kyrgyz Republic does not regulate paternity/maternity issues in relation to LGBT people separately, which leads to restrictions on this group's access to parenthood. The implementation of this right is only possible through the adoption of a child (without disclosing one's sexual orientation and gender identity), the birth of a child in heterosexual relationships, or, for single women, through the use of assisted reproductive technologies.

When considering the possibility of adoption, it should be noted that adoptive parents can be **«adults of either sex, with the exception of persons specified in Part 1 of Article 48 of the Code of the Kyrgyz Republic on Children»<sup>25</sup>**. At the same time, the territorial subdivision of the authorized body for the protection of children that performs the functions of the guardianship and trusteeship body has the right to request information about potential adoptive parents from legal entities and citizens, to inspect the living conditions of potential adoptive parents, as well as the right to free access to the adoptive family to monitor the living conditions and upbringing of the adopted child<sup>26</sup>. These circumstances raise serious concerns about whether the characteristics of SOGI hidden by potential adoptive parents will be later revealed and become a reason for canceling the adoption.



## LEGAL GENDER RECOGNITION

The Law of the Kyrgyz Republic «On the protection of health of citizens in the Kyrgyz Republic» provides that **«change or correction of sex is carried out in medical organizations through medical intervention at the request of an adult patient in accordance with medical, biological, and socio-psychological indicators in the manner determined by the authorized state body of the Kyrgyz Republic in the field of healthcare»<sup>27</sup>**.

<sup>24</sup> Constitution of the Kyrgyz Republic, Article 36.

<sup>25</sup> Regulations on the procedure for transferring children for adoption to citizens of the Kyrgyz Republic and to foreign citizens, approved by Order of the Government of the Kyrgyz Republic of 27 October 2015 N 733, Article 6.

<sup>26</sup> Id., Article 24.

<sup>27</sup> Law of the Kyrgyz Republic «On the protection of citizens' health in the Kyrgyz Republic», Article 38.

In 2017, in order to ensure the proper implementation of this norm, the Expert Council for the Assessment of the Quality of Clinical Guidelines/Protocols developed and put into effect **«guidelines for the provision of medical and social assistance for transgender, transsexual, and gender non-conforming people for medical professionals at all levels of healthcare and for specialists of other institutions of the Kyrgyz Republic»**. These guidelines provide for the issuance of a medical report with a corresponding diagnosis, which is drawn up using the prescribed form and presented to the registry office in order to change one's gender marker in identification documents.

Until recently, the procedure for amending civil status records was quite transparent and was regulated by Paragraph 3, Part 1 of Article 72 of the Law of the Kyrgyz Republic «On acts of civil status»<sup>28</sup>, on the basis of which a decision on correcting or amending a civil status record is made when the necessary document on gender reassignment issued by a medical institution is provided.

Currently, the law mentioned above is no longer in force<sup>29</sup> in accordance with the new edition of the Law of the Kyrgyz Republic «On acts of civil status» of 1 August 2020, which does not provide for the possibility of amending civil status records to change one's first and last name and gender marker in passport.

These changes may lead to a complication of the procedure for legal gender recognition, the need to include the judiciary in resolving this issue, and to a deterioration in the quality of life of trans\* people in the Kyrgyz Republic.



## FREEDOM OF PEACEFUL ASSEMBLY AND MOVEMENT

The constitutional right to freedom of peaceful assembly<sup>30</sup> is governed by the norms of a special law<sup>31</sup>, which stipulates that the exercise of the freedom of peaceful assembly cannot be restricted, except in certain cases<sup>32</sup>, and that state and local authorities are obliged to respect and ensure the right to freedom of peaceful assembly regardless of sex, race, language, ethnicity, religion, age, political or other beliefs, origin, or property or other status<sup>33</sup>.

Organizers of a peaceful assembly must inform local authorities about it by submitting a corresponding notification in writing no earlier than 30 days and no later than 2 working days before the date of the event<sup>34</sup>. The decision to restrict the time, place or route of a peaceful assembly, or to completely prohibit it, is made only by the courts and only under certain circumstances. The burden of proving the existence of the grounds necessary for prohibiting or restricting the assembly in court rests on the applicant who petitioned the court.

<sup>28</sup> <http://cbd.minjust.gov.kg/act/view/ru-ru/1655/>

<sup>29</sup> See the transitional provisions of the Law of the Kyrgyz Republic «On acts of civil status» of 1 August 2020 N 110; <http://cbd.minjust.gov.kg/act/view/ru-ru/112094?cl=ru-ru>

<sup>30</sup> Constitution of the Kyrgyz Republic, Article 34.

<sup>31</sup> Law of the Kyrgyz Republic «On peaceful assemblies».

<sup>32</sup> Id., Article 2.

<sup>33</sup> Id., Article 4.

<sup>34</sup> Id., Article 11.

It is perhaps due to the lack of a procedure for obtaining permission to hold peaceful assemblies and the absence of strict restrictions on such events in the Kyrgyz Republic that human rights events are carried out, including ones initiated by the feminist community. However, the participants of such events have been subject to attacks and mass arrests<sup>35</sup>.



## FREEDOM OF ASSOCIATION FOR LGBT PEOPLE AND PLHIV

The Law on NGOs regulates public relations arising in connection with the establishment, activities, reorganization, and liquidation of non-profit organizations, including foreign non-profit organizations operating in the territory of the Kyrgyz Republic. There are several registered LGBT organizations in the country, including «Kyrgyz Indigo»<sup>36</sup> and «Labrys»<sup>37</sup>, the two largest and most active organizations openly representing the interests of and advocating for the rights of LGBT people. There are initiative groups and human rights organizations that openly support the LGBT community and that enter into coalitions and situational partnerships with LGBT activists. The human rights movement in the country can be characterized as steadily developing and inclusive, while issues of equality and non-discrimination are in constant focus and on the agenda.

On the other hand, local activists report constant attempts by deputies to restrict and tighten rules governing the work of NGOs, including, in imitation of neighboring countries, requiring NGOs to report on funding received from international donors (there were earlier attempts to make the registration of NGOs as foreign agents mandatory, but the bill was not adopted). Kyrgyz human rights activists consider these new possible restrictions to be discriminatory and such that they will allow the authorities to control and restrict the «unwanted» even more<sup>38</sup>.

At the same time, international donor organizations remain the main source of funds to support human rights work, particularly in relation to the rights of LGBT people. For example, «Kyrgyz Indigo» reports that it had applied for funding to work with the community as part of the procedure for state social orders for social services, but that their application was not successful.

In accordance with the Law of the Kyrgyz Republic «On state social orders» and the Regulation of the procedure for holding competitions for socially useful projects in the implementation of a state social order, approved by Order of the Government of the Kyrgyz Republic of 15 December 2017 N814, the Ministry of Labor and Social Development collects project applications and issues state resources to public organizations. However, if an organization is not successful in its application, the Ministry does not disclose the reasons for the refusal. Local human rights activists describe the nature of funding under competitions for HIV programs as irregular and point out that international foundations are the main source of financial support.

<sup>35</sup> [https://24.kg/obschestvo/146233\\_HRW\\_prizyivaet\\_rassledovat\\_napadenie\\_nauchastnits\\_marsha\\_zaprava\\_jenschin/](https://24.kg/obschestvo/146233_HRW_prizyivaet_rassledovat_napadenie_nauchastnits_marsha_zaprava_jenschin/)

<sup>36</sup> Сайт <https://indigo.kg>

<sup>37</sup> Сайт <https://labrys.kg>

<sup>38</sup> More at: <https://www.currenttime.tv/a/kyrgyzstan-money-otkuda-dengi/30470591.html>





## STATISTICAL DATA

At the official level, data collection in the country is insufficient. First, there are no official statistics on the number of hate crimes reported to the police. There is a lack of official statistics on the number of complaints of discrimination, particularly due to the absence of a single state agency that could gather such statistics and be responsible for antidiscrimination policies. Such figures are only collected by NGOs, but do not reflect the full scale of the problems and do not show how exactly the state is involved in resolving these problems.

In the field of health, the Republican AIDS Center collects and publishes data on the number of PLHIV, including data on the number of HIV+ MSM. Open sources indicate the number of registered PLHIV and transmission routes, including «*homosexual sexual [transmission]*». Studies are also carried out as part of sentinel surveillance, which make it possible to estimate the number of MSM, the percentage of infection, and to obtain other information.

The situation is even worse with respect to data on the number of complaints of domestic violence. There is no such official data, even in relation to women, let alone for LGBT people and PLHIV.

In summary, it can be noted that the Kyrgyz Republic, despite a number of positive aspects such as the decriminalization of voluntary homosexual relations and the use of a fairly broad list of characteristics protected from discrimination, has not yet solved a number of issues that are crucial for improving the quality of life of LGBT people. Among other things, attention should be paid to the lack of proper investigation of hate crimes, the prohibition on the adoption of children by prospective adoptive parents with HIV, and the modification of the procedure for legal gender reassignment for trans\* people. It should be noted that resolving these issues and other issues as quickly as possible is only possible through cooperation between the government of the Kyrgyz Republic and NGOs.



## RECOMMENDATIONS



### FOR THE GOVERNMENT

- 1 Amend Paragraph 2 of Part 2 of Article 2 of the Constitution of the Kyrgyz Republic, expanding the list of characteristics protected from discrimination and adding HIV status, sexual orientation and gender identity.
- 2 Amend Article 75 of the Criminal Code of the Kyrgyz Republic, adding a new item to the list of aggravating circumstances: «**committing a hate crime (hostile attitude) based on the victim's HIV status and/or his sexual orientation and gender identity**».
- 3 Amend Article 185 of the Criminal Code of the Kyrgyz Republic, expanding the list of protected characteristics and adding health status (HIV status), sexual orientation and gender identity.
- 4 Remove HIV infection from the List of diseases the presence of which precludes a person from becoming an adoptive parent, guardian, or foster parent.
- 5 Eliminate discrepancies in laws regulating legal gender recognition for trans\* people.
- 6 Simplify and make accessible the procedure for registering and monitoring the work of NGOs, including NGOs providing services to PLHIV and LGBT people, guarantee their access to competitions for funding from national and local budgets on an equal basis with other NGOs.



### FOR CIVIL SOCIETY ORGANIZATIONS

- 1 Analyze the situation in the country with regard to the prohibition on adoption by PLHIV, develop proposals to the government of the Kyrgyz Republic to eliminate these prohibitions.
- 2 Initiate the elimination of discrepancies in laws regulating legal gender recognition for trans\* people by preparing draft proposals that take into account the transparency and accessibility of this procedure.
- 3 Collect data on the number of complaints of discrimination, including hate crimes, disaggregated according to various grounds, including SOGI, and publish such data together with information about what government actions are taken to punish and prevent such human rights violations.

